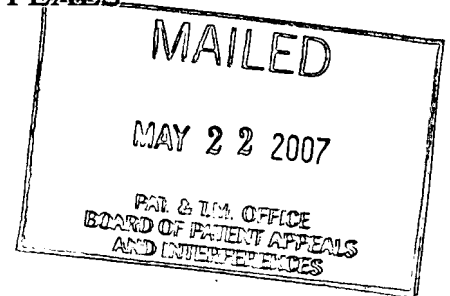


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONALD L. NISLEY
and JAMES E. MICKELSON

Application No. 09/938,793



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on January 16, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal.

Accordingly, the application is herewith being electronically returned to the examiner. The matter requiring attention prior to docketing is identified below:

An Examiner's Answer was mailed September 7, 2006.

Section § 1207.02 of the Manual of Patent Examining Procedure

(MPEP) (8th Ed., Rev. 3, August 2005) states:

Requirements for Examiner's Answer

The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

....

(8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

It is noted that while the Examiner's Answer listed Grzina (4,859,460), Hatch (4,943,068), Tripathy (6,149,158), Motsch (4,368,933), and Tooley (4,348,067) as Evidence Relied Upon, the claim rejection is listed as follows:

1. Claims 5 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grzina in view of Uhen. [Page 9];

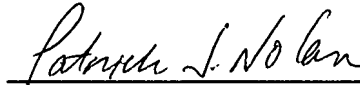
The Examiner's Answer is deficient because it does not include a complete listing of the "Evidence Relied Upon." Before further review, the examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of references mentioned in the statement of rejections. Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) issue and mail a PTOL-90 having the missing references listed under the Evidence Relied Upon section, paragraph (8); and
- 2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
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Deputy Chief Appeals Administrator
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PJN/dal

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